April 23, 2007

Commission's Secretary
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Office of the Secretary
Federal Communications Commission
445 12th Street, SW
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Washington, DC 20554

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Re: WC Docket No. 06-210
CCB/CPD 96-20

Further Ex-Parte Comments of Petitioners
In Response to AT&T's Opposition for Petitioner's Motion for Summary Decision

AT&T Concedes that it is Self Evident Under the Tariff
that All Obligations Do NOT Transfer On A Traffic Only Transfer

Dear FCC

Analysis of AT&T's Original Position
AT&T's August 26th 1996 Brief to the FCC

AT&T brief to the FCC 8/26/96 page 2 Para 1

Attached here as Exhibit A

> Pursuant to the Commission's Public Notice released July 26th, 1996 and Section 1.415 of the Commission's Rules, 47 C.F. Section 1.45, Respondent AT&T Corp. ("AT&T") hereby submits its comments in Opposition to (1) the Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTPII **Plans** Under AT&T Tariff F.C.C. No. 2

AT&T's position was that it wanted the entire **plans** to transfer with petitioner's traffic only transfer. AT&T did not take the position to the District Court that it wanted just the transferor's plans **obligations** to transfer leaving the transferor plan remaining with the transferor.

Why didn't AT&T just ask for the transferor's plan obligations to transfer since AT&T has asserted that it wanted shortfall and termination obligations to transfer? Why? Because there is no such transaction permissible under the tariff to transfer away just the transferor's plans revenue commitment and associated shortfall and termination obligations leaving the plan behind with the remaining non transferred accounts.

When the DC Circuit correctly saw that section 2.1.8 allowed traffic only transfers AT&T had to create a transaction that never existed! Due to the DC Circuit Decision AT&T was forced to argue that 2.1.8 allows traffic only transfers but the traffic only transfer mandated that the transferors plans revenue commitments/shortfall and termination obligations must also transfer. The reason why AT&T can not provide evidence of such a traffic only transfer is the no such evidence exists.

See exhibit I in petitioners 9/27/06 filing which is a fax from AT&T processing manager Joyce Suek that advised petitioner that AT&T "**no longer process partial TSA's, the TSA must be for the whole plan;** i.e. traffic only transfers, it had to be for the whole plan.

Exhibit I:

> Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity. Additionally **we "no longer" process partial TSA's, the TSA must be for the whole plan.** [1]

[1] Due to the fact that many aggregators were transferring substantial traffic from their 28% CSTPII plans to CT-516's discount of 66% AT&T violated its tariff----- as the Suek letter indicates -----and permanently stopped all bulk traffic only transfers under 2.1.8. AT&T counsel Charles Fash took the position, as indicated at exhibit U paragraph 3, that account movement could only be done by deleting and adding accounts. This position was taken because **it would require the aggregator to delete and re-enroll with fresh signatures all end-users being transferred.**. AT&T wanted to make it difficult as possible to transfer accounts to the 66% discount plan. Ironically after the FCC's 2003 decision stated the delete and add account movement methodology was an acceptable option, AT&T totally reversed its position and attacked the FCC and asserted to the DC Circuit that 2.1.8 was the way to transfer traffic. The DC Circuit Decision specifically recounts AT&T's "practical benefit argument" for using 2.1.8., as opposed to the delete and add methodology hypothesized by the Commission. See DC Circuit Decision: bottom of page 8 onto page 9. Whether the delete and add methodology (3.3.1Q bullet 4) or bulk transfer (2.1.8) were used ---under neither did the revenue commitments/S&T obligations transfer. Therefore, AT&T did not care that it was unlawfully diverting aggregators to use the slow discount provisioning process under section 3.3.1Q bullet 4.

The tariff simply does not allow the revenue commitment/S&T obligations to transfer and have CCI/Inga keep its plans because as per 3.3.1.Q bullet 10 (exhibit D in petitioners 9/27/06 filing) the plan obligations are that of the transferor AT&T customer which customer status is defined by the WATS service plan ownership.

That is why Transmittal 8179 (exhibit L in petitioners 9/27/06 filing) only requested a plan transfer when substantial traffic was transferred. AT&T never even proposed its plan obligations must transfer on a "traffic only" transfer, because the tariff provides no such option. When AT&T did do partial TSA's (i.e. traffic only transfers), never did the plan obligations transfer to the transferee.

Now that the DC Circuit has correctly stated that 2.1.8 allowed traffic only transfers, **AT&T is now trying to re-write history**. AT&T is arguing today that petitioner's actually had the option in Jan 1995 to do a "traffic only" transfer in which its revenue /S&T obligations transferred and the plan remained!!! AT&T in an attempt to cover-up for its Nov.28th 1995 concession that PSE does not assume the tariffed obligations bogusly stated that AT&T counsel was only referring to what petitioner's were proposing not what the tariff mandated. AT&T argued that all of its tens of thousands of traffic only transfers resulted in plan obligations transferring. However all the traffic only transfers presented in the record show plan obligations do not transfer on a traffic only transfer.

No such option to transfer plan obligations on a traffic only transfer ever existed under the tariff. If such an option actually existed under the tariff------ the AT&T Joyce Suek evidence shows that it was AT&T's position was that it was permanently stopping all traffic only transfers--- the TSA (Transfer Service Agreement) had to be for the whole plan.

Therefore when the DC Circuit understood that 2.1.8 allowed traffic only transfers the obligations question was answered by default because there are only two options.

AT&T wants the FCC believe that it was allowing traffic only transfers and on a "traffic only" transfer the tariff required the transferor to transfer away its plan obligations. The tariff does not permit this. That is why can not show any evidence--- none exists.

That is why exhibit J to petitioners initial brief [an AT&T 2/23/02 version of the AT&T section 2.1.8 Transfer of Service Agreement (TSA)] states that S&T "**may**" transfer. Yes it would if you do a plan transfer! AT&T's current bogus tariff analysis that all plan obligations must transfer on a traffic only transfer would dictate that its revised 2.1.8 section would have to say shortfall obligations "**must transfer** " not "**may**" transfer.

Of course **AT&T never addressed this exhibit** because it confirms petitioner's tariff analysis is absolutely correct. Of course AT&T has no evidence to support its bogus theory. No AT&T evidence------ is all the evidence one needs----- to see that this is one massive scam AT&T has pulled off for over 12 years.

When AT&T attempted to retroactively enact Tr. 8179 the proposed 2.1.8 language mandated that when a substantial "traffic only" transfer was attempted the transferor's PLAN must transfer--- not the transferor's plan obligations. As AT&T's counsel Mr. Carpenter admitted to the Third Circuit ---the Commission thought AT&T was doing more than codifying what 2.18

meant. Therefore AT&T lost its Substantive Cause pleading and the status quo of 2.1.8 remained the same--- 2.1.8 allowed traffic only transfer's without the transferor's plan obligations transferring and (as per exhibit S in petitioners 9/27/06 filing) there was no cap to the amount of accounts that could be transferred.

AT&T Page 4 Para 3

Attached here as exhibit B

> On or about Jan 13th 1995 CCI made a transfer request to AT&T- ostensibly under Section 2.1.8 of AT&T Tariff FCC No 2--- that it be allowed to transfer **all the traffic** (i.e. **all** locations subscribed under the CSTPII plans at issue) but not the plans themselves to Public Service Enterprises of Pennsylvania.

Above we see that AT&T first misrepresents that "all the traffic" was transferred. Due to the fact that the only way that the transferor's plans revenue commitment /S&T obligations transferred was when an entire plan transferred, AT&T needed to take the position that **all** the traffic was being transferred.

This was, as what has become common place------ an AT&T scam-------- as the AT&T TSA's at exhibit F of petitioner's 9/27/06 filing pgs. 5-13 clearly show petitioners specifically instructed AT&T to keep accounts on the plan to **maintain the transferor plan structure**.

See AT&T counsel Charles Fash letter at exhibit U to petitioner's 9/27/06 filing at paragraph 2 in which he confirms that this would **keep the plan structure in place**. AT&T account manager Joseph Fitzpatrick advised petitioner's that the transferring plans should keep its master account on the plan to keep the plan structure. AT&T counsel Charles Fash confirmed this also in the exhibit U letter:

> "move all but two locations from the plan in question to another reseller, thus **leaving the plan structure technically in place**"

AT&T counsel Mr. Carpenter perpetuated the AT&T scam of mischaracterizing petitioners "traffic only" transfer as a plan transfer before the Third Circuit.

See Carpenter at exhibit V in petitioners 9/27/06 filing Third Circuit oral argument Pg 15 line 23…

> When you're transferring **all** the traffic, you're transferring the **plan**. That is –and the obligations have to go with it, shortfall and termination liability. (emphasis added)

Now see AT&T's Counsel David Carpenter again mischaracterize petitioner's traffic only transfer before the Third Circuit at exhibit O in petitioners' initial filing as he states: **these sorts of transfers of plans:**

> The FCC asked us to withdraw the complaint because the FCC thought we had done more in the tariff language than codify what the tariff already meant because it went beyond prohibiting **these sorts of transfers of plans** that would affect transfers of individual locations.

Mr Carpenter understood 2.1.8 allowed traffic only transfers with no revenue and /S&T obligations transferring but the scam was to mischaracterize the transaction as a plan transfer so the revenue commitment/S&T obligations would transfer.

AT&T again mischaracterizes petitioner's transaction on page 5 of its 1996 brief a plan transfer to the FCC:

Attached here as Exhibit C

> On or about Jan 13th 1995 CCI made a transfer request to AT&T- ostensibly under Section 2.1.8 of AT&T Tariff FCC No 2--- that it be allowed to transfer all the traffic (i.e. all locations subscribed under the CSTPII plans at issue) but not the plans themselves to Public Service Enterprises of Pennsylvania.
> **AT&T objected on the grounds that section 2.1.8 did not authorize the transfer of a *"plan"* unless the transferee, in this case, assumes the original customer's liability….**

It is true that 2.1.8 did not authorize the transfer of a ***"plan"*** unless the transferee, assumes the original customer's liability------ but obviously petitioner's did not do a PLAN TRANSFER. The AT&T master con was to state the obvious under the tariff but to conveniently mischaracterize the transaction as a plan transfer instead of a "traffic only" transfer.

The above section continues with AT&T's second back-up scam.

> and that the location only transfer violated the "fraudulent use" provisions of section 2.2.4 of its tariff because the transfer had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall and termination charges.

AT&T's strategy was to first argue that the whole plan had to transfer and if that failed AT&T had a back-up scam.

AT&T continued its scam of mischaracterizing petitioner's "traffic only" transfer as a plan transfer again misrepresenting that all the locations were transferred.

AT&T REPLY brief to the Third Circuit 1996: Page 17 para 2:

Attached here as Exhibit D

> CCI notes that a transfer of service **can apply either to individual end user locations or to entire plans**. See CCI Br. at 31-32 & n.13. CCI then, incongruously, seeks to defend the District Court by citing "**record evidence"** that addressed transfers of ("**not entire plan's liabilities"**), and showed that the **only obligation** transferred to the "new customer" in that event is the unpaid liability associated with the individual end user location that is transferred.
>
> **But that is self-evident under the tariff**.
>
> By contrast, when "**all" the plan's traffic and locations are being transferred** to a new customer and when the "plan" would then exist only as an "empty shell", then the "new customer" would not be assuming "all" the associated "obligations" unless it assumed the "**existing customer's" shortfall and termination commitments**.

Yes, AT&T conceded before the Third Circuit Court that it was self-evident under the tariff that all obligations do **not** have to transfer on a "traffic only" transfer. In an attempt to cover-up for the evidence that CCI presented to the Third Circuit ------AT&T deliberately misrepresented that petitioners transfer was a **plan** transfer when AT&T was well aware that it was a traffic only transfer. AT&T misrepresented that **all the plan's traffic and locations are being transferred—when the record shows they were not all transferred.**

Let's review another AT&T scam…

AT&T REPLY brief to the Third Circuit 1996: Page 18 para 1:

Attached here as Exhibit E:

> Further, AT&T also demonstrated that even **if Section 2.1.8B could "somehow be read" to permit transfers of a plan's traffic without all associated obligations**, the proposed transfers would both violate the antifraud provisions of the tariff (because they would evade shortfall or termination liabilities) and violate Section 202(a) of the Communications Act.

AT&T just admitted that it was **self-evident** that S&T obligations don't transfer under the tariff and the cover-up mischaracterized the transfer as a plan transfer instead of a traffic only transfer.

Above AT&T flips its defense and asserts that S&T obligations must transfer –but if you don't believe this cover-up then we will assert our fraudulent use provisions.

AT&T understood that it did not make sense to simultaneously argue that S&T should transfer while also arguing its fraudulent use sections. This is true because the fraudulent use argument was based upon S&T obligations remaining with CCI but most of the traffic going to PSE.

Therefore the way that AT&T counsel Mr. Brown phrased the argument is "**if Section 2.1.8B could somehow be read to permit".**

AT&T counsel phrased AT&T's position in a way that AT&T was hoping it could argue both positions that opposed each other.—1) AT&T's position that S&T Obligations must transfer and 2) if S&T do not transferor then AT&T will assert our fraudulent use provisions. Because the two AT&T positions were based upon two underlying opposing theories AT&T came up with its opposing theories. In actuality both AT&T assertions were scams. The Fraudulent Use theory was accurate that revenue commitments/S&T obligations did not transfer but Fraudulent Use should have never applied in this case. As we have seen AT&T on Dec 20th 2006 conceded that the plans were all immune from S&T anyway till at least June of 1996--- 18 months after the traffic only transfer.

Remember at this point AT&T was also correctly arguing that CCI was not jointly and severally liable for the S&T obligations on the "traffic only" transfer—**therefore AT&T could not have possibly been arguing that it was being defrauded of joint and several liability charges**. AT&T 12 years later changed its position on joint and several liability on traffic only transfers to provide a bogus cover-up for all the AT&T lawyers who stated S&T obligations remained with CCI on the traffic only transfer.

Let's move to page 10 para 2 of AT&T's August 26th 1996 brief to the FCC:

Here as Exhibit F:

> CCI ostensibly sought to transfer the traffic---**but not the "plans"** themselves---- to PSE under section 2.1.8 of AT&T's Tariff F.C.C. No. 2. Section 2.1.8B states that a Customer may transfer its WATS service ***(in this case* the relevant WATS services are the CSTPII "*Plans")*** to a "new Customer" only if the new customer confirms in writing that it "agrees to assume all obligations of the former Customer at the time of transfer or assignment."

Again AT&T mischaracterizes petitioner's "traffic only" transfer as a plan transfer as it states: "***in this case*" the relevant WATS services are the CSTPII *Plans."***

Obviously in this case it is a traffic only transfer--- not a **PLAN** transfer. AT&T simply intentionally lied by stating ***in this case* the relevant WATS services are the CSTPII "*Plans".***

The AT&T scam was to present an accurate reading of the tariff on an entire **plan** transfer but misrepresent the characterization of the transfer.

Further Evidence Showing AT&T's Proposal Defense is Bogus

AT&T counsel stated in AT&T's November 28th 1995 brief to the District Court that under the tariff the transferors plan obligations stay with CCI and are not PSE's on the traffic only transfer.

AT&T attempted to cover for its counsel by bogusly asserting that what its counsel was referring to was what petitioner's proposed and not what the tariff actually mandated. AT&T bogusly asserted that 2.1.8 required revenue commitments/S&T obligations to transfer on traffic only transfers and what AT&T's Nov 28th 1995 statement was in reference to was the description of petitioner's transaction which AT&T claims was not in accordance with 2.1.8. AT&T basically stated that every transferor has always transferred its revenue commitments/S&T obligations on a "traffic only" transfer. AT&T shows no evidence of these other so called permissible traffic only transfers because none exists. AT&T's cover-up is total nonsense.

Petitioners have already provided substantial evidence to counter AT&T's bogus cover-up but here is even more…

On February 16th 1995 AT&T counsel Richard Meade wrote a letter in regard to AT&T's Substantial Cause Pleading to the FCC's Deputy Division Chief David Nall to retroactively apply Transmittal 8179.

> Dear Mr. Nall
> AT&T submits this letter to demonstrate that there is substantial cause for applying the tariff changes set forth in Transmittal 8179 to AT&T **customerS** receiving services under existing term plans and Contract Tariffs.
> The Transmittal adds a paragraph to the existing sections of Tariff F.C.C. Nos. 1 and 2 governing Transfer or Assignment of service to clarify that transfer of all or substantially all of the locations or 800 numbers associated with a Tariff 1 or 2 term plan (or Contract Tariff) to another customer is deemed a transfer of the term plan (or Contract Tariff) itself, if the anticipated result of the transfer otherwise would be a significant commitment shortfall.

This statement by AT&T Counsel Mr. Meade is clearly showing that AT&T was seeking to change all its tariffs for all its customer**s**------ (plural)----- due to AT&T's obvious acknowledgement that petitioner's traffic only transfer was permissible under the tariff.

If AT&T actually believed that petitioner's traffic only transfer was a so called ***proposal*** to act outside the tariff there would be no need for AT&T to request the FCC to allow AT&T to retroactively change all of its tariffs. Who is AT&T fooling? The FCC staff should be insulted

that AT&T actually believes that the FCC staff is going to believe any of AT&T's brand new "***proposal defense"*** to try and cover for all its counsels admissions.

There's More …
Mr. Meade then Writes:

> **The Transmittal Clarifies Existing Tariff Terms**
> As a clarification of existing tariff provisions rather than a substantive change, the proposed tariff provision should be applied to existing term plan and Contract Tariff customer**s** without any special showing.

Again this shows that the charges were for all customer**s** (plural)as AT&T recognized the petitioner's traffic only transfer was explicitly in accordance with AT&T's tariff. AT&T's so called ***proposal defense*** is but a farce as AT&T was making changes to its tariffs for all of its customers as AT&T recognized that tariff permitted petitioner's traffic only transfer.

It must also be noted here that Mr. Meade states that a **clarification** was needed. This argument dooms AT&T in any event as tariffs must be **explicit.** See petitioner's 1/31/07 filing on page 61 under the heading: "Section 2.1.8 Was Not Explicit To Say the Least" for several additional AT&T statements that section 2.1.8 was not explicit.

Pursuant to Rule 61.2, titled "Clear and **explicit** explanatory statements, as in effect in January 1995, in order to remove all doubt as to their proper application, all tariff publications must contain **clear and explicit explanatory statements** regarding the rates and regulations." 47 C.F.R. 61.2 (1994).

It is well settled rule of tariff interpretation that "tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, **for the user can not be charged with knowledge of such intent or with the carriers canon of construction.** Associated Press Request for a Declaratory Ruling, 72 FCC 2d at 764-765, para. 11 (quoting Commodity News Services, Inc. v. Western Union, 29 FCC at 1213, para. 2.)"

> FCC's MR. BOURNE During DC Circuit Oral Argument:
>
> MR. BOURNE Well, Judge Tatel, the Commission looked first at the language of Section 2.1.8 and found the language to be **ambiguous,** and concluded that; as the district court had.

Mr. Bourne during oral argument reminded the DC Circuit that it had always adhered to laws regarding tariffs needing to be explicit:

MR. BOURNE: And the Commission's rules **require tariff provisions to be clear and explicit, and "this Court" has declined to enforce tariff provisions against customers in the past** when they failed that rule. And the Commission found that that was the case here.

Back to Mr Meade's letter to the FCC:

> To the extent that the existing customer seeks to transfer **all the service associated with a plan** to another customer, the new customer must assume the existing customer's obligations respecting that service. Of necessity, this includes the obligations to fulfill the revenue or volume commitments of the underlying plan.

Again AT&T mischaracterizes petitioner's "traffic only" transfer as a transfer of "**all the service associated with a plan."** Again the AT&T scam was to present an accurate reading of the tariff on a **plan** transfer but misrepresent the characterization of the transfer.

Mr Meade further notes that the petitioner's traffic only transfer:

> would leave the **continuing obligation** to pay shortfall (or termination) charges

The phrase **continuing obligation** should be noted here. AT&T's other new defense for some of its counsel is that the counsels were all referring to joint and several liability obligations remaining with CCI's plan on a traffic only transfer, as AT&T asserted the actual obligations transfer to PSE.

Here however Mr. Meade states that these are the continuing obligations. There is nothing in the record where AT&T ever stated that after a "traffic only" transfer the transferor is obligated for joint and several liability obligations. The reason is that the actual--- as AT&T counsel Mr. Meade states----**continuing obligations** never transfer. AT&T during this time explicitly stated that joint and several liability did not apply to traffic only transfers. See exhibit Z to petitioner's 9/27/06 filing confirming AT&T's position that petitioner's would not be jointly and severally liable. This is due to the fact that petitioner's **continued obligations** stayed with the CCI/Inga plans.

Summary

AT&T's "***proposal defense"*** has been thoroughly destroyed by petitioners. The evidence is overwhelming that petitioner's submitted a "proper" TSA "as per the tariff" and was not acting outside it. AT&T attempted to changes all its tariffs for all customers.

AT&T counsel Mr. Meade's' "substance over form" argument additionally recognized the correct tariff methodology was used. AT&T simply did not like the size of the transfer. However there is no tariffed cap to the amount of accounts that can be assigned.

Petitioners have also provided various other AT&T statements that also explicitly answer Judge Bassler's question on "traffic only" transfer in petitioners favor.

Additionally AT&T can not cover-up its clear concession when it responded to CCI's evidence, in which AT&T conceded that under the tariff it was **"self evident"** that only account obligations transferred not all obligations.

Petitioners respectfully ask the FCC fulfill petitioner's Motion for Summary Decision and issue multiple Declaratory Rulings against AT&T on the traffic only transfer issue as well as the shortfall and discrimination issues.

Respectfully Submitted
One Stop Financial, Inc
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc

/s/ Al Inga
Al Inga President